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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

vs.

FIDELITY HOME ENERGY, INC.,

Defendant.

Case No.:

COMPLAINT

CIVIL RIGHTS – EMPLOYMENT
 DISCRIMINATION

JURY TRIAL DEMAND

NATURE OF THE ACTION

The United States Equal Employment Opportunity Commission brings this action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of national origin and to provide appropriate relief to Charging Party Ayesha Faiz who was adversely affected by such practices. As alleged below, Fidelity Home Energy, Inc. subjected Ms. Faiz to a hostile work environment based on her Afghan national origin and constructively terminated her employment.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to §706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. §2000e-5(f)(1) and (3) and §102 of the

1 Civil Rights Act of 1991, 42 U.S.C. §1981a.

2 2. Venue is proper in the United States District Court for the Northern District of
3 California because the alleged unlawful employment practices were committed within the city of San
4 Leandro and the county of Alameda.

5 **INTRADISTRICT ASSIGNMENT**

6 3. This action is appropriate for assignment to the Oakland Division of this Court because
7 the unlawful employment practices alleged were committed in Alameda County, which is within the
8 jurisdiction of the Oakland Division.

9 **PARTIES**

10 4. Plaintiff, the Equal Employment Opportunity Commission (EEOC), is the agency of
11 the United States of America charged with the administration, interpretation, and enforcement of Title
12 VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

13 5. At all relevant times, Defendant, Fidelity Home Energy, Inc. (the Employer or
14 Defendant) has continuously been a California corporation doing business in the State of California
15 and the City of San Leandro, and has continuously had at least 15 employees.

16 6. At all relevant times, Defendant has continuously been an employer engaged in an
17 industry affecting commerce, within the meaning of §701(b), (g) and (h) of Title VII, 42 U.S.C.
18 § 2000e(b), (g) and (h).

19 **ADMINISTRATIVE PROCEDURES**

20 7. More than 30 days before the filing of this lawsuit, Ayesha Faiz filed a timely charge
21 with the EEOC alleging that Defendant violated Title VII.

22 8. On August 20, 2018, the EEOC issued to Defendant a Determination for Ayesha Faiz's
23 charge finding reasonable cause to believe, *inter alia*, that Defendant violated Title VII by subjecting
24 Ms. Faiz to harassment and constructive discharge based on her national origin. The EEOC invited
25 Defendant to join in informal conciliation methods in a collective effort toward a just resolution of
26 Ms. Faiz's charge.
27

1 18. Within the first week of her employment, Ms. Faiz was advised of and personally
2 observed Defendant's adherence to a discriminatory practice of denying service to leads who
3 Defendant's employees perceived to be of Middle Eastern or Indian descent. Ms. Faiz understood,
4 upon information and belief, that Defendant's CEO, Bradley Smith, imposed the practice.

5 19. Defendant's Representative Services Supervisor (RSS), Leata Tufano, informed Ms.
6 Faiz about the discriminatory policy during her initial training. Ms. Tufano instructed Ms. Faiz to try
7 to discern by last name whether a lead was of Middle Eastern or Indian descent and directed her to tell
8 callers perceived to be Middle Eastern or Indian that Defendant did not have any available
9 appointments, even when this was not true. Defendant's RSS also charged Ms. Faiz to tell these callers
10 that Defendant would send them information about its services even though Defendant had no
11 intention to mail the information to them.

12 20. Ms. Tufano also demonstrated for Ms. Faiz how to use Google to screen caller names
13 if she was uncertain whether the lead was Middle Eastern or Indian. She showed Ms. Faiz how to
14 search the lead's name and view images of people with the same last name as a method to try to discern
15 the individual's national origin. When Ms. Tufano concluded that the individual was likely Middle
16 Eastern or Indian, she cancelled the appointment.

17 21. Ms. Faiz learned that Defendant used its internal database to track leads based on their
18 ethnicity. Defendant used an "Ethnicity" field to place leads on an internal Do Not Call list when their
19 names appeared to be Indian or Middle Eastern. Ms. Faiz also observed that Defendant's employees
20 annotated database records for individuals who appeared to be Indian or Middle Eastern with
21 comments such as "Not Qualified" or "We Won't Run This" or "Indian Name!" Ms. Faiz also saw a
22 post-it note on an employee's computer that said, "No Indians."

23 22. Defendant instructed Ms. Faiz to insert comments, such as "NQ" or "Not Qualified" in
24 database notes for leads that she knew the company did not want to pursue because they were likely
25 Middle Eastern or Indian. Defendant also required Ms. Faiz to instruct subordinate telemarketers to
26 adhere to the discriminatory practice.

27 23. Ms. Faiz followed Defendant's instructions and rejected leads of perceived Middle

1 Eastern or Indian descent, although she found the practice offensive. She was compelled to adhere to
2 the discriminatory policy almost daily.

3 24. Defendant's practice of discriminating against Middle Eastern and Indian potential
4 customers caused Ms. Faiz considerable distress and anxiety, particularly since many of the people
5 targeted by the policy had last names shared by members of her own family and community.

6 25. Throughout her tenure, Ms. Faiz raised her concerns about and objections to the
7 discriminatory practice to multiple supervisors. Nevertheless, the practice persisted causing a
8 discriminatorily hostile work environment for Ms. Faiz.

9 26. The effect of the practices described in paragraphs 14 through 25 above has been to
10 deprive Ms. Faiz of equal employment opportunities and otherwise adversely affect her status as an
11 employee, because of her national origin, Afghan and Middle Eastern.

12 27. The unlawful employment practices described in paragraphs 14 through 25 above were
13 intentional.

14 28. The unlawful employment practices complained of in paragraphs 14 through 25 above
15 were done with malice or with reckless indifference to the federally protected rights of Ms. Faiz.

16 **Second Claim – Constructive Discharge**

17 29. The EEOC hereby incorporates the allegations of paragraphs 1 through 25 above as
18 though fully set forth herein.

19 30. Since the beginning of November 2015, and thereafter, Ms. Faiz endured a workplace
20 rife with discrimination directed toward Middle Eastern and Indian people. Almost daily, she was
21 required to adhere to a discriminatory practice that excluded customers of Middle Eastern and Indian
22 descent. She questioned multiple supervisors about the policy and complained about it. Her
23 complaints were futile. Defendant continued to discriminate against Middle Eastern and Indian
24 potential customers.

25 31. Unable to continue working under discriminatory conditions, Ms. Faiz sent a text to
26 Defendant on December 7, 2015 writing, in relevant part: "I've been really uncomfortable working
27 [here] knowing the company refuses to service middle easterners or Indians. . . It makes me sick to

1 know that we refuse to service a particular ethnicity of people. We literally go out of our way to single
2 them out.”

3 32. The acts of Defendant described in paragraphs 29 through 31 above and the First Claim
4 for Relief made Ms. Faiz’s working conditions so intolerable that a reasonable person would have felt
5 compelled to resign. Ms. Faiz felt compelled to resign and was constructively discharged on
6 December 7, 2015.

7 33. The effect of the actions described in paragraphs 29 through 31 above has been to
8 deprive Ms. Faiz of equal employment opportunities and otherwise adversely affect her status as an
9 employee.

10 34. The unlawful employment practices complained of in paragraphs 29 through 31 above
11 were intentional.

12 35. The unlawful employment practices described in paragraphs 29 through 31 above were
13 done with malice or with reckless indifference to the federally protected rights of Ms. Faiz.

14 **PRAYER FOR RELIEF**

15 Wherefore, the EEOC respectfully requests that this Court:

16 36. Grant a permanent injunction enjoining Defendant Employer, its officers, agents,
17 servants, employees, attorneys, successors, and all persons in active concert or participation with it,
18 from creating, failing to prevent and failing to promptly correct an offensive, abusive, intimidating,
19 and hostile work environment on the basis of national origin, and/or engaging in any other employment
20 practice that discriminates on the basis of national origin.

21 37. Order Defendant Employer to institute and carry out policies, practices, and programs
22 which provide equal employment opportunities for workers of Afghan, Middle Eastern or Indian
23 descent, and which eradicate the effects of its past and present unlawful employment practices.

24 38. Order Defendant Employer to make whole Ms. Faiz, by providing appropriate backpay
25 with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary
26 to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement
27 of Ms. Faiz.

39. Order Defendant Employer to make whole Ms. Faiz by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including job search expenses and medical expenses, in amounts to be determined at trial.

40. Order Defendant Employer to make whole Ms. Faiz by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices described above, including inconvenience, pain and suffering, loss of enjoyment of life, anxiety, stress, and humiliation, in amounts to be determined at trial.

41. Order Defendant Employer to pay Ms. Faiz punitive damages for its malicious and reckless conduct, as described above, in amounts to be determined at trial.

42. Grant such further relief as the Court deems necessary and proper in the public interest.

43. Award the EEOC its costs of this action.

JURY TRIAL DEMAND

The EEOC requests a jury trial on all questions of fact raised by its complaint.

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